

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office

**May 20 through May 26, 2011**

Each week, the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

**The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.**

ALBANY LAW SCHOOL et al., MATTER OF v NEW YORK STATE OFFICE OF MENTAL RETARDATION and DEVELOPMENTAL DISABILITIES et al.:  
3<sup>RD</sup> Dept. App. Div. order of 1/27/11; modification; leave to appeal granted by App. Div., 5/13/11;  
DISCLOSURE - MEDICAL RECORDS AND REPORTS - ACCESS BY PROTECTION AND ADVOCACY AGENCIES TO MENTAL HYGIENE FACILITY CLINICAL RECORDS; MENTAL HYGIENE LAW §§ 33.13(c)(4) and 45.09(b) - COMBINED ARTICLE 78 PROCEEDING AND ACTION PURSUANT TO 42 USC § 1983; PARTIAL DISMISSAL OF PETITION/COMPLAINT;

Supreme Court, Albany County, among other things, partially granted respondents' motion to dismiss the petition/complaint; App. Div. modified by reversing so much of the Supreme Court order as denied petitioners access to (1) records under Mental Hygiene Law § 33.13(c)(4) of developmentally disabled individuals who are unable to consent and have actively involved family members who are not a legal guardian, conservator or other legal representative as defined by federal regulations and (2) records under Mental Hygiene Law § 45.09(b), and affirmed as so modified.

ALEXANDER (HANS), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 3/29/11; affirmance; leave to appeal granted by McGuire, J., 5/17/11;  
CRIMES - PLEA OF GUILTY - VOLUNTARINESS OF A GUILTY PLEA  
CONDITIONED ON THE WITHDRAWAL OF PENDING SPEEDY TRIAL CLAIM;  
Supreme Court, Bronx County convicted defendant, on his guilty plea, of criminal sale of a controlled substance in the fifth degree and sentenced him, as a second felony offender, to a term of 1 1/2 years; App. Div. affirmed.

BECKER, et al., ESTATE OF v MURTAGH, et al.:

2<sup>ND</sup> Dept. App. Div. order of 7/20/10; reversal; leave to appeal granted by Court of Appeals, 3/29/11;  
ADVERSE POSSESSION - HOSTILE POSSESSION; EASEMENT BY  
PRESCRIPTION; DISPUTE CONCERNING BOARDWALK AND DOCK ON BEACHFRONT  
LOT; DOCTRINE OF PRACTICAL LOCATION OF A BOUNDARY LINE;  
Supreme Court, Suffolk County, among other things, declared that the plaintiff Estate established title to the disputed strip of land and dock by adverse possession, declared that plaintiffs Koelsch and O'Hara established an easement by prescription over the disputed strip of land, dock, and area of beachfront property, and declared that the easements recorded by Robert E. Becker with the Suffolk County Clerk on 5/19/05 are valid and binding; App. Div. reversed, granted defendants' motion for summary judgment, denied plaintiffs' cross motion for summary judgment, and declared that plaintiffs have no rights in the disputed property and that the easements recorded by Robert E. Becker with the Suffolk County Clerk on 5/19/05 are invalid and void.

BHUGRA v MASSACHUSETTS CASUALTY INSURANCE COMPANY, et al.:

1<sup>ST</sup> Dept. App. Div. order of 3/31/11; denial of motions; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;  
APPEAL - CHALLENGE TO APPELLATE DIVISION ORDER DENYING MOTION -  
CLAIMED DUE PROCESS VIOLATION ARISING FROM PURPORTED DISMISSAL OF  
APPEAL BASED UPON PLAINTIFF'S FAILURE TO TIMELY PERFECT THE

App. Div. denied plaintiff's motion for renewal of so much of a prior order as denied her motion for, among other things, vacatur of prior orders dismissing certain of her appeals and for additional attentive relief, including leave to appeal to the Court of Appeals.

GEORGE (WILLIAM), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 12/28/10; affirmance; leave to appeal granted by Pigott, J., 5/18/11; Rule 500.11 review pending;

CRIMES - RIGHT TO PUBLIC TRIAL - CLOSURE OF COURTROOM - TRIAL COURT EXCLUDED SPECTATORS, INCLUDING DEFENDANT'S MOTHER, FROM THE COURTROOM DURING THE JURY VOIR DIRE DUE TO LACK OF SPACE AND PROXIMITY TO PROSPECTIVE JURORS; PRESERVATION; Supreme Court, Kings County convicted defendant, after a jury trial, of robbery in the first degree and robbery in the second degree, and imposed sentence; App. Div. affirmed.

HARDY, MATTER OF v TRICO, et al.:

3<sup>RD</sup> Dept. App. Div. order of 2/10/11; affirmance; leave to appeal granted by Court of Appeals, 5/10/11; Rule 500.11 review pending; WORKERS' COMPENSATION - WHETHER THE 2007 AMENDMENTS TO THE WORKERS' COMPENSATION LAW REQUIRE EMPLOYERS TO DEPOSIT THE PRESENT VALUE OF THE UNCAPPED PERMANENT PARTIAL DISABILITY AWARD INTO THE AGGREGATE TRUST FUND FOR CLAIMS WITH DATES OF INJURY PRIOR TO MARCH 14, 2007 - WORKERS' COMPENSATION LAW § 27(2); App. Div. affirmed the 5/22/09 decision of the Workers' Compensation Board which, among other things, directed the employer's workers' compensation carrier to make a deposit into the aggregate trust fund pursuant to Workers' Compensation Law § 27(2).

HUSSEIN, &c., et al., MATTER OF v STATE OF NEW YORK:

3<sup>RD</sup> Dept. App. Div. order of 1/13/11; affirmance; leave to appeal granted by App. Div., 5/6/11; Rule 500.11 review pending; COURTS - RIPENESS DOCTRINE - APPEAL - ACADEMIC AND MOOT QUESTIONS - ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF BASED UPON CLAIMS THAT PLAINTIFFS' CHILDREN ARE BEING DEPRIVED OF THE RIGHT TO A SOUND BASIC EDUCATION IN VIOLATION OF NY CONSTITUTION, ARTICLE XI, § 1, BECAUSE THE SCHOOL DISTRICTS WHERE THEY ATTEND SCHOOL, ALL OF WHICH ARE LOCATED OUTSIDE NEW YORK CITY, ARE SUBSTANTIALLY UNDERFUNDED - WHETHER PLAINTIFFS' CLAIMS ARE NOT RIPE FOR REVIEW BECAUSE THEY ARE BASED UPON DATA OBTAINED BEFORE THE ENACTMENT OF EDUCATION AID REFORM LEGISLATION IN 2007 (L 2007, ch 57, as amended) OR ARE MOOT BECAUSE OF THE ENACTMENT OF SUCH LEGISLATION;

Supreme Court, Albany County denied defendants' motion to dismiss the complaint on the basis that plaintiffs' claims are not ripe

MANKO, MATTER OF v NEW YORK STATE DEPARTMENT OF HOUSING and  
COMMUNITY RENEWAL:

2<sup>ND</sup> Dept. App. Div. order of 2/8/11; dismissal of appeal; sua sponte examination whether any jurisdictional basis exists to support an appeal as of right from the 2/8/11 App. Div. order; APPEAL - CHALLENGE TO APPELLATE DIVISION ORDER THAT, AMONG OTHER THINGS, ON THE COURT'S OWN MOTION, DISMISSED APPEALS FROM TWO SUPREME COURT ORDERS FOR FAILURE TO COMPLY WITH THE COURT'S RULES AND WITH PRIOR ORDER REGARDING THE TIMELY PERFECTION OF THE APPEAL;

Supreme Court, Kings County dismissed CPLR article 78 petitions filed under index numbers 32331/08 and 26610/08; App. Div. denied that branch of appellant's motion which was to enlarge the time to perfect the appeal, dismissed the appeal on the court's own motion for failure to comply with the court's rules and prior order, and otherwise denied the motion as academic.

OTR MEDIA GROUP, INC. v THE CITY OF NEW YORK et al.:

1<sup>ST</sup> Dept. App. Div. order of 4/7/11; affirmance; sua sponte examination whether so much of the App. Div. order appealed from as affirms the denial of a preliminary injunction finally determines the action within the meaning of the Constitution and, as to so much of the App. Div. order as affirms the granting of defendants' motions for summary judgment, whether a substantial constitutional question is directly involved to support an appeal as of right;

CONSTITUTIONAL LAW - VALIDITY OF REGULATION - REGULATIONS RESTRICTING OUTDOOR ADVERTISING SITUATED WITHIN VIEW OF ARTERIAL HIGHWAYS AND PUBLIC PARKS AND IMPOSING SUBSTANTIAL PENALTIES FOR VIOLATIONS - ALLEGED VIOLATION OF PLAINTIFF'S RIGHTS TO EQUAL PROTECTION (NY Const, art I, § 11) AND TO BE FREE OF EXCESSIVE FINES (NY Const, art I, § 5);

Supreme Court, New York County granted defendants' motions for summary judgment dismissing the amended complaint, and denied plaintiff's motion for a preliminary injunction; App. Div. affirmed.

SCHMIDT, MATTER OF v FALLS DODGE, INC. et al. [WORKERS'  
COMPENSATION BOARD]:

3<sup>RD</sup> Dept. App. Div. order of 11/25/09; affirmance; leave to appeal granted by Court of Appeals, 5/10/11; WORKERS' COMPENSATION - AWARD - WHETHER SCHEDULE LOSS OF USE AWARD IS SUBJECT TO NON-SCHEDULE AWARDS IN OTHER WORKERS' COMPENSATION CASES WHERE AWARDS WERE MADE AT THE MAXIMUM STATUTORY RATE AND COVER THE SAME PERIODS - WORKERS' COMPENSATION LAW § 15(6);

App. Div. affirmed a decision of the Workers' Compensation Board, which ruled that claimant's schedule loss of use award is not subject to claimant's awards in other workers' compensation cases.